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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,993	05/10/2001	Daniel Joseph Fox	C6585(C)	5811

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UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
EDGEWATER, NJ 07020

EXAMINER

BOYER, CHARLES I

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 07/17/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/852,993

Applicant(s)

Fox et al

Examiner

Charles Boyer

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (e). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 30, 2003
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

This action is responsive to applicants' amendment and response received April 30, 2003.

Claims 1-21 are currently pending.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "greater than about" in claims 1, 8, and 16 renders the claims vague and indefinite. The phrase "greater than about" renders the claim indefinite, since one of ordinary skill in the art would not be able to ascertain the metes and bounds of the phrase "greater than about". It is unclear what values are encompassed by the phrase "greater than about". The examiner suggests that this phrase should be changed to either "greater than" or "about". "Claims reciting "greater than about" are invalid for indefiniteness where there was close prior art and there was nothing in the specification, prosecution history, or the prior art to provide any indication as to what range of specific activity is covered by the term about." See MPEP 2173.05(b). Appropriate correction and/or clarification is required.

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***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 1-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Clarke et al,

US 6,303,565.

Clarke et al teach fabric softening compositions (see abstract). An example of such a composition comprises 0.75% tallow alcohol, silicone emulsion, and the balance water (col. 9, example 1A). Preferred concentrations of the fatty alcohol in these compositions are from 0.2 to 3% (col. 8, lines 5-12). As this reference meets all material limitations of the claims at hand, the reference is anticipatory. Applicants have traversed this rejection on the grounds that Clarke et al do not teach the presently claimed concentration of alcohol. The examiner respectfully disagrees and notes that tallow alcohol may be present in amounts as high as 5%, with 3% being a preferred amount. Accordingly, the rejection is maintained.

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5. Claims 1, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Goldberg et al, US 4,526,781.

Goldberg et al teach alcoholic/aqueous hair care compositions (see abstract). An example of such a composition comprises 3% cetyl/stearyl alcohol, 2% quaternary ammonium surfactants, and the balance water (col. 5, example 8). As this reference meets all material limitations of the claims at hand, the reference is anticipatory.

6. The rejection of claims 1-6, 8-12, 14-17, 19 and 20 under 35 U.S.C. 102(b) as being anticipated by Trinh et al, US 5,977,055 is withdrawn in view of applicants' amendment and response.

7. The rejection of claims 1-6, 8-12, 14-17, 19 and 20 under 35 U.S.C. 102(b) as being anticipated by Roberts et al, US 4,242,377 is withdrawn in view of applicants' amendment and response.

8. The rejection of claims 1-4, 8-10, 14-17, 19 and 20 under 35 U.S.C. 102(e) as being anticipated by Frankenbach et al, US 6,495,058 is withdrawn in view of applicants' amendment and response.

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9. The rejection of claims 1-4, 8-10, 14-17, 19 and 20 under 35 U.S.C. 102(e) as being anticipated by Trinh et al, US 5,968,404 is withdrawn in view of applicants' amendment and response.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-7 and 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clarke et al, US 6,303,565.

Clarke et al are relied upon as set forth above. With respect to the compositions of the present claims being present together with a spray dispenser, it is well known in the art to spray fabric softeners on clothing and such an obvious design choice to one of ordinary skill in the art does not add patentable weight to the claims.

***Allowable Subject Matter***

12. Claim 8 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

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13. Claims 9-15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### *Conclusion*

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Boyer whose telephone number is (703) 308-2524. The examiner can normally be reached on Monday-Friday from 9:30 AM - 6:00 PM.

If reasonable attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for this Group is (703) 872-9310 for non-after-final amendments and (703) 872-9311 for after-final amendments.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Charles Boyer

A handwritten signature in cursive script, appearing to read "Charles Boyer".

July 13, 2003